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Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Investigation into allegations of refugee smuggling at the Nairobi Branch Office of the Office of the United Nations High Commissioner for Refugees

Note by the Secretary-General

1. Pursuant to General Assembly resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the attached report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the investigation into allegations of refugee smuggling at the Nairobi Branch Office of the Office of the United Nations High Commissioner for Refugees (UNHCR).

2. The Secretary-General takes note of the findings of the Office of Internal Oversight Services and concurs with its recommendations. The Secretary-General also takes note of the fact that measures are being taken or initiated to correct many of the issues contained in the attached report.

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Annex

Report of the Office of Internal Oversight Services on the investigation into allegations of refugee smuggling at the Nairobi Branch Office of the Office of the United Nations High Commissioner for Refugees

Summary

At the request of the Office of the United Nations High Commissioner for Refugees (UNHCR), in October of 2000, the Investigations Division of the Office of Internal Oversight Services undertook an investigation into allegations that some UNHCR staff and others were engaged in smuggling people, including refugees, asylum-seekers and persons of no concerns to UNHCR, specifically by demanding money for UNHCR services, which are to be provided to refugees without charge. These refugees or alleged refugees were under the jurisdiction of the Nairobi Branch Office of UNHCR, having left their homes in countries such as the Congo, Ethiopia, Somalia and the Sudan.

Following a brief assessment period, the investigators ascertained that the allegations appeared to have merit and, further, that such activity appeared to be controlled by a criminal network which enabled refugees and others who paid money to emigrate from Kenya to Australia, Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Because of the scope of the problem, and the need for highly skilled investigators, who possessed familiarity with refugee issues and laws in those countries, the Office of Internal Oversight Services approached the Governments of the five countries most concerned with the allegations and requested them to provide specially trained investigators to operate under its authority.

The Office of Internal Oversight Services-led international task force, which comprised investigators from Australia, Canada, Kenya, the United Kingdom and the United States, conducted an investigation which resulted in the arrest by the Kenya Police members of the task force of three UNHCR staff members, two members of an affiliated non-governmental organization and four others who operated the criminal enterprise.

Criminal charges are pending in Kenya against the nine persons arrested. The charges include conspiracy to threaten to kill the United States Ambassador and the UNHCR representative, among others, by the three UNHCR staff members, and cheating, for demanding money from the refugees, by all persons charged.

The Office of Internal Oversight Services noted the problem of poor management in UNHCR, especially at the Branch Office, which provided the opportunities for the criminally minded to achieve unjust enrichment at the expense of the refugees. The Office of Internal Oversight Services understands that, since June 2001, the senior management of UNHCR has taken substantial measures to correct the management failings identified and to undertake necessary improvements in the operations in Kenya, although action to improve management failings at the office started much earlier than June 2001.

The Office of Internal Oversight Services offers a warning: the factors which existed in Kenya, as in other countries with large numbers of refugees, led to this refugee smuggling enterprise, and they will appear wherever the demand for resettlement by refugees who cannot, or will not, return home exceeds the ability or willingness of other Governments to take them.

**While the investigation was ongoing, the senior management of UNHCR, including the Director of International Protection, the Regional Director for the East and Horn of Africa, the Inspector General and the newly appointed Representative to Kenya, were able to review the situation. As a result, action has been initiated to redress the situation in Kenya and, equally importantly, to start a review of our procedures in refugee status determination and resettlement globally. This action was taken under the overall coordination of the Deputy High Commissioner. The general findings of the UNHCR review on which the current action is based are very similar to the recommendation in this report.*

The situation that led to the need for this investigation is indeed regrettable, but UNHCR has been able to learn and implement many lessons from the investigation. As a result of the experience in Kenya, UNHCR will in the coming months become a much more accountable organization, management and performance will be strengthened and the oversight and investigation capacity will be improved.

* Comments by UNHCR to the present report are in italics.

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I. Background

A. United Nations international task force

1. According to United Nations studies, worldwide, there are 14 million refugees and 30 million internally displaced persons who are seeking asylum, refuge or resettlement to another country or safe return to their home countries. In Kenya, it is estimated that there are 250,000 such persons, whether refugees, prima facie refugees, asylum-seekers or other persons of concerns to the Office of the United Nations High Commissioner for Refugees (UNHCR). They come from Burundi, Sudan, the Democratic Republic of the Congo, Ethiopia, Somalia, Rwanda and the Sudan.

2. On 11 October 2000, the Inspector General of UNHCR reported to the Chief of the Investigations Division of the Office of Internal Oversight Services that information available to UNHCR indicated possible serious wrongdoing by some UNHCR staff and others involving the trafficking in refugee documentation for fees ranging from US$ 1,500 to $6,000 per refugee.

3. The Inspector General further advised that the allegations referenced false documentation of refugee recognition under UNHCR mandate and resettlement paperwork, which the purchasers were using to emigrate and resettle abroad using UNHCR services. Because prior reviews and inquiries had been inconclusive, the Inspector General requested that the Investigations Division of the Office of Internal Oversight Services conduct an assessment and recommend a course of action.

4. Consequently, the Investigations Division conducted a preliminary inquiry into the allegations and, four weeks later, was able to identify 19 cases in which refugees had allegedly paid money to "brokers" and/or staff members of UNHCR to obtain facilitation of their resettlement in Australia, Canada, the United Kingdom and the United States. In addition, the Division had received from its own confidential sources, and independently of UNHCR, reliable information to the effect that there seemed to exist a well established and organized criminal network serving as the major conduit in the movement of refugees out of Kenya.

5. In analysing this information, the Division realized that, if the allegations were found to be true, as the information seemed to indicate, the United Nations and one of its major specialized agencies, UNHCR, were facing the stark reality of being exploited by a criminal syndicate.

6. It was evident to the Office of Internal Oversight Services that the very nature of the case required a prompt response by highly skilled and specially trained investigators. The Investigations Division did not have sufficient resources to combat such an organized crime network, nor staff trained in resettlement fraud. Therefore, in late November 2000, the Chief of the Division proposed a new strategy to the UNHCR Inspector General, namely, the creation of an international task force of investigators specializing in schemes involving refugee resettlement from the five countries most affected by the network in Kenya.

7. The Office of Internal Oversight Services secured agreement from the High Commissioner for Refugees, the Under-Secretary-General for Internal Oversight Services and the Secretary-General and held consultations with the Office of Legal Affairs and the Office of the Controller. Thereafter, the Investigations Division contacted representatives of the Member States most affected and asked them to supply two qualified professional investigators each with at least ten years' experience in immigration investigations. Kenya responded by supplying three Criminal Investigation Department investigators, Australia supplied two investigators from its Department of Immigration and Multicultural Affairs, Canada supplied two investigators from the Royal Canadian Mounted Police, the United States supplied two investigators from the Immigration and Naturalization Service, the United Kingdom supplied two senior detectives, one from the Serious Fraud Office and the Criminal Investigations Branch of the Durham Constabulary, respectively. All the investigators met the experience criteria established by the Investigations Division. The Member States agreed that their personnel would be under the complete operational management of the Investigations Division of the Office of Internal Oversight Services and that they would operate as an international task force, with the status of United Nations Office of Internal Oversight Services officers, according to United Nations Rules and Regulations and international investigations standards, as set by the Investigations Division of the Office of Internal Oversight Services.

8. The task force planned for a three-month operation in Kenya with the goal of detecting any person against whom sufficient evidence of involvement in the smuggling of refugees could be secured, including evidence of extortion and corruption, and presenting this evidence to a relevant criminal jurisdiction in Kenya, or elsewhere, if applicable. The task force commenced operations in Nairobi on 5 March 2001 under the direct supervision of the Senior Investigator of the Investigations Division of the Office of Internal Oversight Services. Throughout, the Division has maintained contact with the senior management of UNHCR, who provided substantial support to this effort.

B. Role and mandate of the Office of the United Nations High Commissioner for Refugees

9. Created in December 1950 by the General Assembly in its resolution 428 (V), the Office of the United Nations High Commissioner for Refugees is mandated to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. Today with some 22.5 million refugees and other persons of concern, UNHCR is one of the world's principal humanitarian organizations, with a staff of more than 5,000 assigned in 277 offices in over 120 countries.

10. UNHCR has two basic and closely related aims: to protect refugees and to seek ways to help them restart their lives in a normal environment. International protection is the cornerstone of the agency's work. In practice, that means ensuring respect for a refugee's basic human rights, including those set forth in the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol thereto, and especially, that no person will be returned involuntarily to a country where he or she has reason to fear persecution.

11. UNHCR promotes international refugee agreements and monitors government compliance with international refugee law. Its staff work in a variety of locations, ranging from capital cities to remote camps and border areas, attempting to provide protection and to minimize the threat of violence, including sexual assault, to which many refugees are subject, even in countries of asylum. UNHCR seeks long-term or durable solutions for refugees by helping them to repatriate to their homeland if conditions so warrant, to integrate into their countries of asylum or to resettle in third countries.

12. The efforts of UNHCR are mandated by the organization's statute and guided by the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol. The 1951 Convention defines a refugee as a "person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". UNHCR also extends its mandate to other persons such as those meeting the refugees definition set forth in the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. The General Assembly and the UNHCR Executive Committee have also authorized the organization's involvement with other groups. These include people who are stateless or whose nationality is disputed and, in certain circumstances, internally displaced persons.

Office of the United Nations High Commissioner for Refugees in Kenya

13. Kenya acceded to the Geneva Convention in 1966, the Protocol in 1981 and the Organization of African Unity Convention in 1992. There is no refugee legislation in Kenya in effect at the present time, but the Government's refugee policy requires that refugees reside in designated areas. There are currently two such areas, the camps at Kakuma and Dadaab, which are operated by the UNHCR Branch Office in Nairobi, which is further supervised by the Regional Directorate in Addis Ababa.

14. The main objectives of UNHCR in Kenya, as set out in chapter 4 of the Resettlement Handbook, are: first, to promote the voluntary repatriation of Somali refugees to north-west Somalia; second, to provide protection, including physical security, and assistance for refugees in the Dadaab and Kakuma camps; third, to protect and assist refugees in urban areas and needy asylum-seekers awaiting a decision on their status; and fourth, to facilitate resettlement to third countries for those who are eligible, particularly the most vulnerable, including those in need of legal and

physical protection, women at risk and refugees without local integration prospects, among others.

C. The "refugee resettlement market"

15. The complexity and size of the problem facing UNHCR and the task force can only be understood against the background of the significant refugee drama being played out in Kenya. As a result of internal conflicts, often exacerbated by climatic conditions (e.g. droughts) in some of the countries in East Africa over a number of years, there has been a large movement of populations across borders. Kenya has been seen by many of these people on the move as a relatively attractive option, owing to its perceived stability and the existence within its borders of established assistance structures. Because of these factors, Kenya is host to more than 250,000 asylum-seekers and refugees, mostly from the neighbouring countries of Ethiopia, Somalia and the Sudan, as well as from Rwanda and other African countries, housed primarily in the camps operated by UNHCR at Kakuma and Dadaab.

16. Kakuma comprises three refugee camps, situated 127 kilometres south of the Kenya-Sudan border. There are eight different nationalities and over 20 ethnic groups living there. Kakuma is home to some 70,000 refugees, approximately 25,000 under the age of 18.

17. Located in the north-east of Kenya, Dadaab is comprised of three camps with a combined population that exceeds 120,000, nearly two thirds of the entire Kenyan refugee population. The majority of the population are Somalis, but there are also Ethiopians, Sudanese and a small number of Eritreans and Ugandans.

18. The refugees who are better resourced soon discover that the reality of life in the camps offers them little prospect for successful local settlement or third-country settlement. With repatriation an uncertain and mostly unwanted outcome, their reality becomes one of unpleasant choices. If they do not want to put their lives on hold indefinitely in the camps, they can abandon the camps and move to an urban area, such as Nairobi or Mombasa. Thus, with each year, the refugee communities in Nairobi and Mombasa grow more crowded. There appear to be a number of factors as to why refugees are leaving Dadaab and Kakuma refugee camps:

(a) Processing of refugee applications. The general perception in the refugee community, although not necessarily realistic, is that in order to have an application of resettlement processed, one needs to travel to the UNHCR Branch Office at Nairobi, where resettlement applications are actually processed;

(b) Security. Task force investigators consistently heard from refugees, UNHCR staff and non-governmental organizations that the security levels at the refugee camps are highly inadequate. Investigators were advised of instances of rape, ethnic and clan-motivated attacks, looting of "stalls" within the camp and burning of residences. Furthermore, during the investigation, riots occurred at Kakuma refugee camp, which resulted in the loss of several lives. Investigators were also advised of attacks on the camps by "bandits". Although there is a police presence attached to the camps, it appears to be inadequate with regard to ensuring the security of so many refugees.

(c) Lifestyle. Although in the limited time of its operation, the task force was not able to visit the Kakuma or Dadaab refugee camps, it did interview numbers of refugees assigned to those camps and heard anecdotal but consistent reports from them, as well as from non-governmental organizations, UNHCR staff and embassy personnel, regarding the lifestyle at the camps. Essentially, there is little or no prospect for employment and the limited services available are primitive in nature. A number of refugees find living in Nairobi a far better option, even though the housing available to them is very poor and employment for them is mostly found only on the black market.

19. Most refugees are not knowledgeable about the intricacies of the processing undertaken by UNHCR, nor about their rights and obligations, including the fact that the services provided by UNHCR are always free of charge, although UNHCR has published such information. With only a small fraction of the refugees finding resettlement available to them, the incentives exist for a thriving corrupt criminal enterprise to flourish on the refugee resettlement market by accommodating the demands of the better resourced refugees and/or those posing as refugees.

II. The criminal case

A. The criminal enterprise

20. Information collected during the assessment conducted in October 2000 by the Investigations Division of the Office of Internal Oversight Services indicated the existence of some ad hoc arrangements for profiteering from refugees' desperation between persons outside UNHCR (known as "brokers") and some UNHCR personnel based at the Nairobi Branch Office. The task force investigators, after three to four weeks on the ground, were able to plot the actual size and scope of a criminal enterprise, which was a network of persons including UNHCR staff, designed to obtain substantial profits via false promises and false documents given to refugees and others seeking resettlement. The inquiry was able to confirm that the majority of the criminal activities were, in fact, part and parcel of the same principal criminal enterprise, involving as many as 70 people identified by the international task force as functioning at various levels, but controlled essentially by 10 people. They demanded and received money from refugees desperate for resettlement for UNHCR services, such as UNHCR mandate refugee documentation which were, in fact, free of charge. Three of the persons identified were UNHCR staff and two others were staff of an affiliated non-governmental organization, with the remaining participants including one former staff member. The latter, in a recent interview with Investigations Division investigators, confirmed the existence of the criminal enterprise, as described in the present report. He also confirmed that prices for falsely promised resettlement ranged from US$ 2,000 to 5,000 per person.

21. The structure of the principal criminal enterprise was well defined, in that there were various functional echelons within its organization. For example, the lowest echelon was made up of "brokers", who were persons from the different nationalities within the refugee community. Their job was to solicit business for the upper and mid-level echelons of the enterprise. The brokers were the criminal enterprise's eyes and ears in the refugee community. In their position, they were able to determine for their masters which refugee group either had or could raise money for refugee documentation and resettlement status. The brokers would then provide this information to persons in the higher tiers in the criminal enterprise and effect the necessary introductions.

22. The middle echelons had two functional positions: enforcers and initial contacts. The enforcers were nationals and refugees, selected for that task by higher echelon personnel, who carried out the orders of upper echelon personnel and who, in some cases, used strong-arm tactics to effect the collection of payment from refugees, including (but not limited to) intimidation of refugees and potential witnesses, and physical assault. The task force received numerous reports from refugees who had been brutally assaulted by persons whom the task force identified as enforcers. The majority of those refugees who reported acts of violence to the task force had police and hospital reports that supported their respective claims. Towards the end of the investigation, in late May 2001, some of these enforcers threatened two of the task force team members.

23. Initial contacts in the middle echelon were, for the most part, UNHCR staff who had illegally requested payments of from 50 to 100 Kenya shillings from refugees to facilitate their entry into the UNHCR Nairobi Branch Office. These same persons also requested and received money to move prospective refugees further up in the queues or to facilitate the passage of a given refugee's case to a higher level echelon in order for the case to be considered for resettlement.

24. Generally, the upper echelon consisted of a few UNHCR staff and advisers who played key roles in the process, as well as non-governmental organization staff members who could assist and facilitate criminal activity in their respective offices.

25. Of all of the positions held in the aforementioned echelons, UNHCR staff holding the positions of associate protection officer and protection clerk were key to the successes of the criminal enterprise. Those persons provided the authorized signatures necessary to recommend resettlement to the resettlement country or, at the very least, renewal of a UNHCR refugee mandate letter authorizing the refugee applicant to remain in the Nairobi environs, rather than being transported to a camp.

26. The task force investigators observed that tribal and clan affiliation was of no obvious concern to the co-conspirators in the criminal enterprise. Rather, they focused on how best to take advantage of refugees

seeking resettlement in other countries through UNHCR by demanding payment of fees for those services. The motivation of the criminal enterprise was not one of ideology or favouritism, but rather, of simple greed. To that end, the criminal enterprise would arrange to substitute and resettle persons, including refugees not deserving resettlement, in the place of deserving refugees, thus unduly depriving the latter of possible resettlement. For refugees who could not pay and whose identities had been stolen by these staff members and sold to persons not entitled to refugee status and resettlement, their wait for assistance would be never-ending, as they had been stripped of the one thing left to them, their identities.

27. Thus the temptation for the criminally minded exists in the refugee market. This market offers a potential for millions of dollars to be made from desperate refugees and others seeking resettlement. Some UNHCR staff members saw an opportunity to exploit and profit from this market and, in so doing, created a prosperous network of interlocking responsibilities which comprised the criminal enterprise.

B. Conspiracy to threaten and threat history at the Nairobi Branch Office

28. When the Investigations Divisions of the Office of Internal Oversight Services conducted its assessment in October 2000, it became aware and collected evidence of threats which had been made against UNHCR personnel who, in the past, had attempted to enquire about exploitation of refugees and who had been assessed by the criminal enterprise as a potential interference to its lucrative continuation. In addition, as it inevitably became known that the local Investigations Office of the Office of Internal Oversight Services Investigations Divisions was conducting an assessment (in October 2000), it was not long before persons targeted by the criminal enterprise at both UNHCR and the Office of Internal Oversight Services Investigations Division began to receive anonymous verbal and written threats. It should be noted also that, in the past and prior to the task force investigation, threats made against those in UNHCR who had been perceived by the criminal enterprise as potential interference had been evacuated. In effect, the criminal enterprise's threats against those persons had been successful in sabotaging any attempts at investigating its activities. Therefore, prior to commencing operations on the ground in Nairobi, the task force could reasonably predict that it would be operating in an environment of increasing threats.

29. Within two weeks after commencement of its operations, the task force was able to develop a well-placed source and to collect evidence that certain UNHCR staff members within the criminal enterprise were conspiring to send threatening letters to the Ambassador of the United States of America in Nairobi, to the senior Immigration and Naturalization Service official attached to the United States Embassy in Nairobi and to three UNHCR senior officers.

30. On 17 March 2001, task force investigators learned that three UNHCR staff members, who controlled the criminal enterprise operations (see para. 24 above), had noted the commencement of the investigation and had decided that they needed to halt it as they had stopped prior inquiries, that is, through threats and a possible "bomb attack" on the Branch Office. A source advised that the three staff members had contacted him in his position of "broker" and had requested him either to write or organize the writing of five threatening letters in Arabic and English and to sign them using the name of Osama bin Laden. The letters were to be sent to three current senior UNHCR staff and the two officials at the Embassy of the United States, including the Ambassador.

31. The source reported that the reason the three UNHCR staff members wanted the letters written in Arabic with a false bin Laden signature was to heighten the profile of the threats in the eyes of the United States. Because most members of the task force were white males, the plotters had assumed that they were agents of the United States Federal Bureau of Investigation when, in fact, none of them were. Nonetheless, because of this mistaken view, the plotters decided that it was no longer sufficient to threaten United Nations staff but also United States Embassy staff, in order to pressure the United States into removing the task force.

32. The source advised that the threatening letters constituted the first phase of a four-phase plan as explained to him by the three UNHCR staff members. He advised that the second phase would involve the procurement of an "F1" bomb (identified as a grenade), which a willing employee at UNHCR would place in a toilet, where it would be detonated. This second phase,

according to the source, was designed to heighten, and demonstrate the plotters' willingness to activate, the threat if the task force were not pulled out of Kenya. Phase three was to include the kidnapping of a daughter of a UNHCR senior official.

33. The source reported that phase four would be the actual carrying out of the threats made in the letters. The intended targets were alerted immediately by the task force and additional security measures were undertaken to protect them.

34. The source further stated that he had met at a hotel in downtown Nairobi with one of the UNHCR staff members, who had dictated the contents of the letters to the source. There had been an agreement between the source and the UNHCR staff member that the letters would be completed and delivered to the latter on 20 March 2001.

35. The source stated that, during one particular meeting with the three UNHCR staff members, one had said "we get rid of certain UNHCR employees [who were not corrupt] the same way we got rid of other UNHCR employees in the past". The source also stated that during the meeting, one of the suspended UNHCR staff members had said they planned to kill the "black United States Ambassador". In the course of his conversations with the three UNHCR staff members, the source had been asked whether he had any ties to Osama bin Laden and/or if he knew somebody who could arrange for them to meet with bin Laden and discuss a plan for "killing" the United States Ambassador. Although there was never any evidence that these three had contacts with the terrorist, all the information was provided by task the force to the United States Embassy, UNHCR and the Kenya Police.

36. With this information and the cooperation of the source, the task force was able to formulate an operational plan. The source, at considerable personal risk, was wired with recording equipment and the meeting between himself and the UNHCR staff member was captured both on audio and video. This operation was conducted in the presence and with the assistance of the Kenya Criminal Investigation Department officers attached to the task force and in accordance with the legal requirements applicable in Kenya.

C. Relevant laws of Kenya, arrests and charges

37. As the investigation progressed and further evidence was gathered, the task force's Kenya Criminal Investigation Department officers confirmed that the team had gathered substantial evidence of crimes committed. The investigators thus proceeded to plan for the arrest of the three UNHCR staff members. On 19 April 2001, the Kenya Criminal Investigation Department arrested the three persons, who were charged with violations of the Penal Code of Kenya for threatening to kill (conspiracy) and the taking of money from refugees.

38. The three arrested UNHCR staff members appeared in court and were subsequently released on bail, with the result that some witnesses and task force investigators became subject to threats and reprisals from members of the criminal enterprise who had yet to be arrested. The investigation and subsequent arrest of other members of the criminal enterprise created a substantial amount of media attention, which also served to increase the threat risk to the witnesses, as well as task force investigators.

39. The legal requirement of the Kenya court proceedings after the initial arrests unavoidably resulted in exposing the identities of witnesses and complainants who had come forward to provide direct evidence in relation to the corruption and threat charges. In addition, their names were published by the local press. Complaints were made to the task force by those witnesses, who reported that they had been threatened, and some of them assaulted because of their assistance to the task force, and their impending testimony at forthcoming court trials. This required the task force, in the absence of a government witness protection programme, to take basic and rudimentary measures in protecting the witnesses with the assistance of UNHCR. In this regard, the task force identified 18 witnesses who, with their families (a total of 93 persons), were in need of heightened protection. Six additional witnesses who were found to be in real and immediate danger of serious retribution at the hands of those who had been arrested, and their families, had to be relocated.

40. As a result of its three-month effort, and in addition to the criminal charges preferred against the three UNHCR staff members, the task force gathered sufficient prima facie direct evidence for another six

persons to be arrested for violations of the Penal Code of Kenya in relation to the payment of money by refugees (up to US$ 6,000 per person in some instances) for the fraudulent guarantee of resettlement. Some of the charges preferred under the Penal Code of Kenya were in relation to money collected from refugees by "brokers" and UNHCR personnel who had promised refugees that their case would move forward for consideration of resettlement. Some refugees had been requested to pay money in order to secure a mandate letter allowing them to remain in Nairobi, while other refugees and non-refugees paid money to "brokers" and UNHCR staff members to be included — under a false identity — in the resettlement application of another family. In addition to testimonial evidence from the victims (refugees) themselves, task force investigators were able to recover corroborating false documentation which had been created either by the concerned UNHCR staff members or their "brokers". The latter even went to the extent, in some cases, of providing service contracts and receipts to refugees who had paid, in order to provide a semblance of a legitimate business transaction on behalf of UNHCR.

41. Each of the three arrested UNHCR staff members were charged with five counts of conspiracy, that is, conspiring to utter or to cause another person to receive a death threat under section 223 (1) of the Penal Code of Kenya, according to which "any person who without lawful excuse utters or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years". This was the appropriate charge, rather than the actual substantive offence, as none of the addressees received a letter. However, there was ample evidence for the conspiracy charge to apply, as the three had jointly gone beyond mere preparation in their planning and intention to effect the preparation and receipt of the letters.

42. Six persons were charged, including the three UNHCR staff members, with the offence of "cheating" under section 315 of the Penal Code of Kenya, which stipulates that "any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour and is liable to imprison for three years".

43. Based on the task force's investigation, in addition to the conspiracy and other charges, a total of 58 charges of "cheating" and two counts of attempted "cheating" were preferred against nine persons by the Kenya police officers attached to the task force. One of the UNHCR staff members was also charged with one count of forgery under section 349 of the Penal Code of Kenya, according to which states that "any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years".

44. Two members of the UNHCR implementing partner, a non-governmental organization known as the African Refugees Training and Employment Service, were charged with taking money from refugees. They were also charged with one count of "malicious injuries to property" under section 339 of the Penal Code of Kenya, which stipulates that "any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour and is liable, if no other punishment is provided, to prison for five years". In the case of the two above-mentioned persons, the evidence shows that they had acted together in destroying the marriage certificate belonging to a refugee, in order to create a false identity for the refugee's spouse and place her on a list for resettlement as part of a different family which had money, but a lesser chance than her of being considered for resettlement.

D. Modus operandi and evidence

45. The task force interviewed more than 200 witnesses. In this regard, it should be noted that the evidence was collected by the task force in conformity with the Evidence Act of the Republic of Kenya, as advised by the Kenyan Criminal Investigation Department officers and legal advisers to the task force. In this connection, it was determined that "direct" testimonial evidence consisted of oral evidence produced by witnesses who were prepared to declare in police statements that they had actually paid money to UNHCR staff, a member of the non-governmental organization or a "broker". Those

witnesses who were prepared to declare that they had been asked for a payment, but had not or could not pay, were classified as corroborating witnesses providing "indirect" evidence.

46. Most witnesses who provided direct evidence were able to identify positively the person(s) to whom the payment(s) had been made and remember the exact amount, the date(s) of payment(s) and the exact circumstances surrounding the events. In some cases, several refugees were able to support their claims with documentary evidence, such as money specifically obtained from friends or family already resettled elsewhere to be used to pay for these UNHCR services which are to be freely given.

47. Analysis of the evidence by task force investigators showed that it would be unlikely for so many witnesses from different countries and ethnic groups and speaking different languages to conspire in fabricating a story against the nine offenders and maintain this story in a consistent form for three months and after repeated interviews by task force investigators and Kenya Criminal Investigation Department officers.

48. In addition to the direct evidence used to support the charges laid before the courts in Nairobi against the nine persons, there is useful corroborating indirect evidence. For example, there is a considerable amount of evidence, documented in the task force interview reports, of refugees being asked by those same persons to pay money for their applications to proceed. However, those refugees either refused to pay or more commonly were not in a financial position to do so. Task force investigators observed that there was a strong correlation between those who stated that they had not, indeed could not, have paid, and the status of their case files at the Branch Office in Nairobi. Such files either did not exist, had been destroyed or simply had not progressed. Moreover, there is evidence that genuine refugees, who had not paid the money demanded by the UNHCR staff had had their identities and files sold by the UNHCR staff to other persons who had paid to assume their identities. In most of those cases, the persons who had purchased such identity had been assessed by the concerned UNHCR staff as an unlikely candidate for resettlement. As a result, had it not been for these corrupted circumstances, deserving refugees who did not have the money to pay would have had a better chance at being resettled. Furthermore, the task force learned that the person who purchases a refugee identity is often not a refugee, but someone posing as such in order to gain resettlement.

49. In addition to the persons who were charged, the task force was able to secure evidence with respect to other persons, loosely connected to the main criminal enterprise, who obtained money from refugees on the basis that their dossier would be "taken care of" or that their case would progress favourably. When released on bail, the three UNHCR staff members and two of the "brokers" separately commenced to threaten witnesses. In this regard, evidence has been obtained by the task force that demonstrated both violations of the terms of their bail and of section 121 (1) of the Penal Code of Kenya, which stipulates that "any person who attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence, is guilty of an offence and is liable to imprisonment for three years". In all of those cases, the evidence has been submitted to the Kenya Criminal Investigation Department for further action.

E. Current situation

50. As a result of the arrests, the task force, the Investigations Division of the Office of Internal Oversight Services and UNHCR are involved in assisting the Kenya authorities in providing evidence in 11 trials: one trial involves the three UNHCR staff members on the charges of conspiracy to threaten to kill; the same three persons have also been charged separately with a number of counts of "cheating". Two other "brokers" will face trials to respond to "cheating" charges of their own, and for some offences, they have also been charged jointly, thereby making it an additional trial for their joint appearance. Trials for the two members of the African Refugees Training and Employment Service who were charged with malicious injuries to property and for a third "broker" for his own appearance on "cheating" charges are also pending. As he has also been jointly charged with one of the UNHCR staff members, it is expected that an extra trial for their joint appearance will be held.

51. At this stage, however, most of the proceedings have been stayed until a Constitutional Court in Kenya pronounces itself on the question of whether those charged are entitled to receive in advance of trial all of the prosecution's evidence, including, for example, the

names and addresses of all prosecution witnesses. This question came about because the three UNHCR staff members, one of whom is a lawyer at the Kenya Bar, argued that, under the Constitution of the Republic of Kenya, they were entitled to such material. Should the Constitutional Court, which has been designated by the Chief Justice to review the matter, decide that the defendants are entitled to this material, it would mark a new rule in Kenya's legal history. As of this writing, the Constitutional Court has not ruled and none of the trials have progressed.

52. The Kenya Police are in possession of the entire body of evidence pertaining to those arrested and to the others against whom substantial evidence has been obtained, including a former junior professional officer at UNHCR who played a key role in the criminal enterprise. He has also been charged in absentia and the Kenya Police have advised that an international warrant will be issued for his arrest. As of the writing of the present report, these actions have yet to be taken.

53. The Kenya Police are also in possession of the necessary evidence to re-arrest the three suspended UNHCR staff members and charge them under section 121 (f) of the Penal Code of Kenya for "offences relating to judicial proceedings", in that they have actively threatened prosecution witnesses since their release on bail. As of the writing of the present report, this action has not been taken.

54. In addition, the two African Refugees Training and Employment Service members decided to seek judicial review of their dismissal from and by the non-governmental organization. In doing so, they have filed civil suit against UNHCR in Nairobi. Since then, the three suspended UNHCR staff members have joined the two members of the non-governmental organization in the civil suit, which is pending in the Nairobi courts.

III. Corruption and mismanagement in the Nairobi Branch Office

A. Problems in processing refugee claims

55. As the evidence of the investigation shows, the UNHCR staff members who were charged and their confederates engaged in this highly profitable criminal enterprise. That these staff members and their associates were so successful required the task force to scrutinize the operations and management of their office in Nairobi.

56. UNHCR's operations in Kenya are managed by the Branch Office in Nairobi, supported by two suboffices at the Kakuma and Daadab camps, with employees totalling more than 130 local and international staff. The Regional Directorate in Addis Ababa provides supervision. The Nairobi Branch Office is located in the Westlands district of the city and consists of the Nairobi Branch Office complex itself and the Eligibility Centre. The Branch Office is headed by the Representative and is administered by the Deputy Representative and the Assistant Representative (Protection), which includes the Resettlement Section, the Assistant Representative (Administration).

57. The Branch Office is housed in a decrepit converted apartment building and an attached residence. The Nairobi Branch Office/Eligibility Centre is secured behind a fence with controlled access and private security guards. The physical security of the Eligibility Centre is problematic, especially during the sporadic and sometimes violent demonstrations that erupt outside the gates from time to time.

58. The Protection Section is responsible for establishing the eligibility of asylum-seekers and determining whether or not they meet the definition of refugee under the UNHCR mandate. This work is undertaken by eligibility officers and supervised by the protection officers who are usually lawyers, including one of the three arrested UNHCR staff members, who was acting in the position of associate protection officer. The Resettlement Section is responsible for processing the resettlement of refugees identified as such by the eligibility lawyers. Once eligibility for resettlement is established by UNHCR, then approaches are made to the embassies of resettlement countries to consider the cases.

59. The function of the Eligibility Centre is to process urban refugees, referred to as individual cases, who arrive at the front gates seeking refuge. A number of staff who work for the Eligibility Centre are not employed directly by UNHCR, but are supplied to it under a contract with the African Refugees Training and Employment Service, the non-governmental organization which is the UNHCR implementing partner.

60. Once admitted into the Eligibility Centre, the process for refugee status determination begins with an interview that is usually conducted by eligibility officers from the African Refugees Training and Employment Service, utilizing contracted interpreters who are for the most part refugee claimants themselves. After admission to the Eligibility Centre, the intake form must be prepared with the interpreters. During their interviews with the task force, the witnesses often cited this stage as crucial, as they alleged that interpreters were known to ask for bribes in return for assisting in the completion of the forms and in preparing a suitable cover story to ensure that the refugees' claims received positive consideration. However, there was no direct evidence that payments were made to interpreters. Once a determination for a durable solution is made, the refugee is apprised of the decision. Those who receive a favourable decision and are determined to be genuine refugees, and those requiring resettlement, are then requested to proceed to the designated camps or in some cases given a mandate letter to allow them to remain in Nairobi pending the outcome of their resettlement process and decision by the contacted embassy. The claimants who are rejected are afforded an opportunity to appeal the eligibility officer's decision. This appeal must be made within 14 days and is also handled by an eligibility officer.

61. Once a positive resettlement recommendation by the eligibility officer is made, the case is referred for review to the Nairobi Branch Office protection officer or the Assistant Representative (Protection). They review the case and, based on a set of profiles, the determination for resettlement is made and the refugee's name is submitted to the embassy of a recipient country. The refugee is often allowed to stay in Nairobi pending the outcome of their resettlement process and decision by the contacted embassy. Although the ultimate decision to resettle remains firmly in the control of the concerned officials at the embassies, the task force learned that the embassies afforded great weight to UNHCR referrals.

62. Only a select number of persons arriving at the Eligibility Centre are allowed access to it, based on the number of interviews that the eligibility officers believe they can process in one day, normally calculated at a maximum of 65 refugees per day. These numbers are in addition to the call-back referrals scheduled by the Eligibility Centre staff for handing out decision letters, reinterviews or for those with appointments with the protection officer. Frequen scheduling of cases takes place, owing to overboo of interviews, lack of interpreters and tech problems with computer equipment.

63. Refugees who had been through this process interviewed by task force investigators and stated corruption and the paying of bribes began at the gate with contracted guards requesting refu selected for interview to pay a small "fee" of from 50 to 100, in order to gain access to the Eligi Centre. Although there is evidence of requests, the no direct evidence of payments made to sec guards. These refugees' testimonies were by and corroborated by observations made by the task f who took note of the events as they unfolded ou the Nairobi Branch Office and saw these and illegitimate activities taking place. For example, d a visit at the Branch Office, two investig witnessed the violent assault of a female refugee guard. They were forced to intervene for fear tha would receive serious injuries.

In September 2001, the security com providing guards to the Nairobi Branch Office changed. All guards are now provided with traini crowd control and in how to deal with anxious p at the gate. They are more strictly supervised to pr any illegal requests for payment.

64. Once inside the Nairobi Branch Office pren under the watchful eye of the contracted sec guards, the refugees are led down a security cor and placed in rooms, where they are segregate ethnic, linguistic and cultural origins to facilitat processing of their cases. There they wait to be c into the Centre for processing and/or an inter According to refugees/witnesses who had gone thr this process and who were subsequently interview task force investigators, being able to achieve a up to this point is considered a victory.

B. Documentation lapses

65. The refugees' files at the Nairobi Branch C constituted information important to their futur well as evidence for the task force. In theory processing of a refugee file begins at the intake after the refugee gains admission to the Branch C The interpreters complete the initial i documentation. Then the refugee is photographe

the file presented to the eligibility officer to conduct the interview. The Eligibility Centre secretary places the tombstone data and file tracking on the electronic filing system. The file clerk is responsible for ensuring that the files are signed out and in each day. If there is a negative resolution to a case and the person is not recognized as a Convention refugee, the file is retained for a period of time, then transferred to the archives off site. If there is a positive determination when the Eligibility Centre is finished with the file, it is transferred to the responsible section such as Protection or Resettlement, until there is a durable solution to the case, at which point it is archived.

66. However, in practice, no policy or directives regarding the filing system, file flow and documentation could be found. The Eligibility Centre's file clerk kept his own ad hoc charge-out system, which was neither complete nor accurate. Files could not be easily located and/or were found to be removed from the file room without documentation to show where it was or who had it. The entire Eligibility Centre file system revolved around the file clerk who, it was noted, spent an exorbitant amount of time searching the building and offices for particular files requested by the task force. When the file clerk was not present, the whole file process ground to a halt and the "self-service" system then prevailed, with persons removing or adding files and documents at will.

67. The file clerk, a long-time UNHCR employee, advised that there was no written policy or directive regarding the files and archive systems. He stated that there was once a system of sign-out cards which had been discontinued with the advent and implementation of the electronic filing system, which was not currently being utilized. Asked why, he responded that, owing to the poor power supply, technical system glitches and little system audit or management, the system was inadequate for the purpose of tracking and recovering information as to who was involved with a file at a given time in the process. Observations and fruitless file searches by the task force confirmed this information.

68. This documentation system collapse further contributed to the criminal enterprise. In one particular instance, for example, the task force requested a file deemed to be an important piece of documentary evidence, but was advised that the file in question was missing and could not be located. A clear signal of the failure to maintain supervision over refugee cases was noted by the investigators in two circumstances: first, they found false files bearing the name of a true refugee next to that refugee's true file. Second, when the homes of the three UNHCR staff members were searched during their arrest, official UNHCR files, file material and documentation were found.

C. Poor management

69. It is clear that the crimes committed by the persons charged were crimes of opportunity. In the absence of a management structure which supported the goals of UNHCR as concerns the refugees and others seeking assistance and also controlled operations, albeit in an admittedly difficult environment, those who were tempted to enrich themselves could do so with virtual impunity.

70. From the guards who were seen beating a female refugee at the UNHCR gate and those in the Protection Office who operated the criminal enterprise, to the managers at UNHCR headquarters who let the office drift without a representative for more than a year, the UNHCR apparatus failed in its obligations to the very clients it is designed to serve.

71. Reports were made to Branch Office managers by staff and others of the schemes described in the present report, but to no effect. Nairobi-based persons who made inquiries were frightened by threats themselves. UNHCR was unable to resolve the complaints in the early stages. When the Inspector General became directly involved with the complaints, things began to change. A United Nations Office at Nairobi Security Service report commissioned by the Regional Director established that there were problems but was unable to identify those responsible. Moreover, both audit reports and inspection reports had made clear over time that the Branch Office was not functioning as it should and in many areas was woefully below standards.

72. The task force found in its repeated visits to the Branch Office and in discussions with past and present managers that the signs of absent management were glaring. As noted, client files were in disarray and promoted the ability of the wrongdoers to succeed in their schemes. False files sat next to true files; tracking the progress of a client through the system was impossible in the absence of documentation; refugees often waited for days at the gate, sometimes sleeping on the highway verge, for supposedly scheduled

appointments, while their files were missing; staff members could take a file with no trace of their access to the file room, much less the removal of the file; persons with no files were declared to be refugees; true refugees had their identities taken and used by others with photographs substituted in the files. And no one noticed.

73. Managers performed little or no review of the work of the individuals responsible for processing applications. Supervision was seen to be minimal; most applications were processed with no review. Senior managers at the Branch Office almost never reviewed the work of their staff and the Regional Directorate performed virtually no supervisory examination of the decisions of the Branch Office. Headquarters devoted little or no time to the management of the Branch Office, aside from the audits and inspections previously noted.

74. Sound and engaged managers cannot prevent the determined criminal from engaging in illegal acts, but they can impose both controls and accountability requirements to impede the potential for the harm that these schemes wrecked on the lives of desperate people. With the limited staffing, the woefully inadequate Branch Office facilities and the problems of the environment in which they were operating, it is fair to say that the managers at the Branch Office did not face an easy task. The problems they had to deal with arose from conflicts not of their making, and they were and are enormous. But rather than directing serious efforts to addressing them, management — from those on site, through the Regional Directorate and to Headquarters — were largely disengaged.

75. The Office of Internal Oversight Services is pleased to note, however, that this has changed dramatically. Not only is a skilled representative now in place, but the Branch Office has the substantial attention of both the Regional Directorate and UNHCR headquarters, which have undertaken significant reforms.

76. In reporting about the management of the Nairobi Branch Office, the Investigations Division of the Office of Internal Oversight Services wishes to emphasize that it does so only in the context of how corruption can take over when management is ineffectual and/or inept in this regard. There were a number of normal management functions in particular which could have and should have been undertaken at an earlier stage, in order to avoid or even neutralize the damaging crisis that the Investigations Division and the task force found on arrival in Nairobi.

77. The Office of Internal Oversight Services notes that many of the staff of the Nairobi Branch Office should be commended for being able to carry out their functions on a daily basis in the face of the constant depressive working conditions and emotional difficulties associated with working with refugees who often do not understand or do not want to understand that their plight cannot be resolved in the immediate future. In the three months of the task force's operation, its investigators came to understand the frustration of constant demands that refugees, or those who allege to be refugees, make on anyone they believe can assist them. Moreover, there exists an expectation in every refugee that his or her problem will be solved by UNHCR.

78. The Investigations Division of the Office of Internal Oversight Services, when it assesses how management should have responded to a particular crisis or problem, seeks to ascertain whether there were sufficient indicators for the management to act. In this regard, the Division enumerates a number of corruption and fraud indicators which were present at the Nairobi Branch Office:

(a) Lack of monitoring of staff activities:

(i) The transportation assistant who was one of the leaders of the criminal enterprise had been previously reported for corruption and strong-arm tactics with co-workers. (This person was arrested by Kenya police officers working with the task force and charged with 5 counts of conspiracy to threaten to kill, 11 counts of cheating and 1 count of forgery.) He had no business dealing with refugees. Yet he was seen to spend most of his time with them, making introductions on their behalf and filling out refugee resettlement forms;

(ii) Security guards were allowed to decide who could be admitted and who would not, often based solely on the payment of small bribes. Public assaults of refugees went unremarked;

(b) Lack of tracking mechanisms for and supervision of refugee cases:

(i) The refugees complained of constantly being rescheduled for appointments. One refugee

who was interviewed by the task force had been rescheduled 72 times. Additional appointments brought the criminal enterprise more revenue and the high number of reschedulings was indicative of cases not being solved, as well as a high turnover of contact between a particular refugee and his or her protection officer;

(ii) Refugees consistently complained of lack of progression in their respective cases. A review by the task force of the files pertaining to said refugees corroborated their claims. Lack of progression in a case file usually leads to three basic conclusions: lack of performance by the officer handling the file; insufficient resources; or a problem between the officer who handles the file and the person who is the subject of the file. The investigators found that the reason that certain cases did not progress was that the refugee had not paid any money. In this regard, there was a strong correlation between those refugees who alleged having been asked to pay money, but who did not or could not, and their files not progressing;

(iii) The lack of coordination at the Nairobi Branch Office consisted of poor communication among peer staff members, little communication between staff and management and virtually no review or organization of their paperwork, which constituted an avoidance of accountability;

(c) Lack of reporting mechanisms:

(i) There were numerous reports of corruption, bribery and strong-arm tactics, which had been received over a long period of time by UNHCR, the United Nations Office at Nairobi Security and the Kenya Police. Moreover, these reports were not limited to one group of refugees or persons of concern, thus indicative of credibility. In addition, the reports were similar in nature and implicated the same UNHCR staff members over and over again;

(ii) The demonstrations by refugees in front of the UNHCR Branch Office alleging corruption and malfeasance by UNHCR staff members was also a strong indicator. Furthermore, the demonstrators reported these incidents to members of the press, who published numerous articles on the subject. One defence counsel told task force that he had been hearing such reports for five years;

(iii) The UNHCR staff members involved in the criminal enterprise exhibited unexplained enrichment. Most were living well above their respective means. For example, the aforementioned transportation assistant owned a very large property and a late model sports utility vehicle which would have been difficult to purchase on his UNHCR salary only. UNHCR managers attended this person's house-warming party;

(iv) Most refugees who were submitting applications at the Nairobi Branch Office reported that they had fled the UNHCR camps for the same reasons, to wit: corruption, bribery, sexual assault and strong-arm tactics. Often these claims were perceived as being a constant "refugee's lament" and therefore easily dismissed;

(v) The task force found that the staff, private security employed by UNHCR, and the refugees themselves indicated the ongoing corruption problem was common knowledge among them all. It was a subject they discussed freely and often;

(vi) Last but not least, the Branch Office found that it had to evacuate staff as the result of threats. Surely, this was one of the most direct signs that corruption actually existed, as any action to combat it was reacted to by threats from those responsible. Management thereby made the threats the most effective tool of the criminal enterprise to protect itself.

79. This list of corruption and fraud indicators is by no means exhaustive. The indicators enumerated are only the most obvious ones and, as can be seen, it is not unreasonable to deduce that they should have provided the Nairobi Branch Office management with a good basis upon which to define the problem and either take action themselves or ask for action to be taken before matters reached crisis point.

80. It appears that successive management regimes felt uncomfortable with admitting to themselves that there was a real problem in the Branch Office, and several factors contributed to a general lack of leadership in aggressively tackling the problem. For

example, for more than a year, the Deputy Representative was the de facto Representative without the authority that the position implies. This resulted in a lack of clear direction and unifying leadership, necessary to effectively provide the office with the confidence that it could take on corruption. Added to the increasing low morale in the entire staff corpus was a destructive lack of coordination within and between functional areas. There was daily evidence of this symptom; as they interacted with the Branch Office, the investigators observed that there was no guarantee that a stakeholder in one decision would advise others necessary for its implementation. In addition, this lack of coordination and idiosyncratic self-management made it impossible for organizational standards to be used, which then led to individual standards being applied to the decision-making with respect to refugees. One UNHCR staff member aptly described the atmosphere at the Nairobi Branch Office as "anarchical".

81. At one time, the UNHCR management had advertised in the local media that UNHCR refugee services in Kenya were free and that refugees should not pay for them! While the present report is not alleging that there was tacit collusion, it is impossible to ignore the fact that the fraud indicators enumerated above had been there for a long time for all to see and for those who really wanted to see them. It is interesting to note that, upon the arrival of the task force in Nairobi, some UNHCR staff saw the problem as part and parcel of refugee life, which occurs everywhere where there are refugees. Moreover, the prevailing attitude was that the problem essentially emanated from the refugees themselves, in that they were the ones "who offer money". A full display of this attitude was in the form of a sign stuck to the outside wall of the UNHCR Branch Office, which warned refugees that it was wrong to offer money for refugee services. While the Branch Office saw this as an effort to stop corruption, the task force saw this as placing the blame on the refugees, as no similar measures were taken in addressing the wrongfulness of accepting money.

82. Although complaints alleging corruption were made at all levels within the Nairobi Branch Office, there appeared to be little, if any, accountability or responsibility for finalizing or resolving such complaints. Indeed, copies of letters and correspondence about allegations of corruption were documented within the UNHCR organization, as evidenced by a few copies obtained during the initial operational review by the task force. However, additional information obtained by the task force strongly indicates that reports had been made which were not provided. For those cases, though, there is little or no evidence of the outcome. It was suggested by a UNHCR officer that local UNHCR management had a tendency to "sweep such allegations under the carpet".

83. Similarly, in interviews with the task force, senior Nairobi Branch Office staff conceded that the Nairobi UNHCR office was "riddled with corruption" and that the office and senior staff there had been unable to act in relation to it in the absence of proof, although they believed that many local staff members there were involved in the corruption network.

84. The Office of Internal Oversight Services does not expect every UNHCR protection officer, manager or even every UNHCR security officer to be a professional investigator. However, it would expect that, given the information available to it, UNHCR management in Kenya would have undertaken corrective measures. One manager told the Chief of the Investigations Division of the Office of Internal Oversight Services that he had asked for something to be done but had no idea what to do himself.

85. Lastly, a plethora of reports were also made to the Kenya Police. Again, there was no coordination between UNHCR and the Kenya Police to allow for a concerted effort to investigate or deter the bribery and corruption being committed at the Branch Office until the task force investigation began in March 2001.

IV. Conclusions

86. The present report, like the investigation it describes, is the work of the United Nations international task force and the Investigations Division of the Office of Internal Oversight Services. Although the task force is disbanded, the Investigative Division, with the UNHCR Inspector General, will continue to pursue the cases uncovered by the investigation. In conclusion, the Office of Internal Oversight Services and the task force offer the following observations:

(a) The criminal enterprise described in the report did not appear overnight, but in its evolution, successive management of the Nairobi Branch Office

should have seen that corruption was seeping into the core operations of their office. However, UNHCR management failed to deal with it early and forcefully. This avoidance led those successive management regimes to take only limited measures, such as posting a sign against offering money, while remaining silent on requesting money; publishing a statement that UNHCR services were free of charge but, as one manager indicated, at a loss as to how to detect and neutralize corruption. This eventually led to loss of donor confidence, low morale and to a general perception that management was tacitly accepting corruption as part and parcel of dealing with refugees.

UNHCR does not fully agree with this conclusion, which it feels is not borne out by information in the report. While UNHCR agrees that it failed to stamp out corruption, or even to deal with it adequately, UNHCR considers it excessive to conclude that it ignored it. According to UNHCR, action to improve management failings was taken since mid-1999 by the UNHCR management in Kenya. In particular, the Branch Office and the Regional Director had been concerned and had taken action, from mid-1999. Moreover, UNHCR notes that the Office of Internal Oversight Services itself discusses the complexity of the situation when explaining the composition of the United Nations international task force.

(b) It was not until after a review by the United Nations Office at Nairobi Security and Safety Service indicated the existence of problems that the UNHCR Inspector General intervened and decided to seek assistance from the Office of Internal Oversight Services — which resulted in the task force being formed — that a coherent attack was developed. In three months, nine persons were arrested, including three UNHCR staff and two affiliated non-governmental organization employees who were the masterminds in a well-established and organized criminal enterprise. Through its investigation, the task force was able to provide sufficient prima facie evidence to the relevant authorities in Kenya for a total of 78 charges under the Penal Code of Kenya.

The Representative and the Regional Director for East and Horn of Africa were seized of the situation and were convinced that corruption was taking place, but could not find any definite evidence. In late 1999, they requested the United Nations Office at Nairobi Security and Safety Service in Gigiri to undertake an investigation, which was done in 2000, with no evidence of corruption. The Inspector General was requested by the Regional Director to undertake an inspection, and it was after this inspection that the Office of Internal Oversight Services was requested to assist UNHCR in the matter. This explanation does not negate the problems identified by both UNHCR and the Office of Internal Oversight Services, but it perhaps highlights the difficulties that UNHCR, as a humanitarian organization, has faced in conducting complex professional investigations. UNHCR did not fully understand the complexity of the situation until shortly before contacting the Office of Internal Oversight Services for assistance. It was because of this realization that UNHCR requested the assistance of the Office of Internal Oversight Services. The Inspector General was called in to assist by the Regional Director.

(c) It was the first time in United Nations history that the multinational investigation task force model was used to combat an organized crime threat. The task force was constructed with the assistance of those Member States most affected, namely, Australia, Canada, Kenya, the United Kingdom and the United States. In addition, the task force received the assistance of other Member States who facilitated an ad hoc witness protection programme when the witnesses who had provided evidence to the task force received serious threats from those arrested. In this regard, the substantial and notable contribution of South Africa must be acknowledged.

UNHCR fully agrees with this conclusion.

(d) Although this criminal enterprise has been demolished, the Investigations Division of the Office of Internal Oversight Services must sound a loud note of caution: all of the push factors which gave rise to this one still remain.

UNHCR acknowledges this note of caution, and agrees. It has already set in motion measures to improve its ability to combat corruption within refugee status determination and resettlement globally, as well as in Kenya.

The Office of Internal Oversight Services responds that, as noted above, as long as the push factors exist, unscrupulous persons will seek to take advantage of desperate people. Already, new reports of false documentation from new sources have been received and will be followed up with the Kenyan authorities.

V. Recommendations*

87. As a result of this investigation, the Investigations Division of the Office of Internal Oversight Services, with the United Nations international task force, have made the following recommendations:

Recommendation 1

While the UNHCR resettlements from Kenya are in a position of lull as some countries have refused to accept UNHCR recommendations until the internal problems are corrected, UNHCR should consider making serious and substantial changes in the management structure in Kenya (Rec. No. IV00/279/01).

Agree. Action is under way and a plan of action was developed and is being implemented. A new Representative has been appointed and is supported by a "reform" coordinator in both Nairobi and Geneva.

Recommendation 2

Significant changes should be made in the staffing of the Nairobi Branch Office, in order to refresh and revitalize that office (Rec. No. IV00/279/02).

Agree. Almost all UNHCR international staff in Kenya is new, and nearly all national staff dealing with protection and resettlement have been changed since January 2001. Action in hand to revitalize the office includes team-building workshops and frequent consultation with all staff on key issues.

Recommendation 3

Additional international security staff should be allocated to the Nairobi Branch Office and that the contract staff be replaced (Rec. No. IV00/279/03).

Agree. In addition to the Field Security Adviser, three new national staff posts have been approved: one for Nairobi and one additional post in each suboffice.

Recommendation 4

At the present time, UNHCR has no external reporting process for refugees or asylum-seekers who are victimized or otherwise mistreated by UNHCR or its partner non-governmental organization staff members. An external reporting process, that is, a telephone number or mailing address to the UNHCR Office of the Inspector General should be made available to refugees when they first come in contact with UNHCR or its partner non-governmental organizations. This number and/or address should be posted in plain sight (large poster form) at all UNHCR facilities and partner non-governmental organizations facilities. The posters should inform the refugees in several languages and in pictorials of the following:

(a) UNHCR and partner non-governmental organizations services are free of charge;

(b) Physical and sexual abuse or other maltreatment by staff members is not tolerated;

(c) Staff members should not ask refugees for monetary compensation, or otherwise, that is, sexual favours;

(d) Refugees should immediately report wrongdoing via the provided number/address. There should also be an advisory to staff members that if they are caught doing any of the aforementioned forbidden activities they will be terminated and/or criminally prosecuted (Rec. No. IV00/279/04).

Agree. Action is being taken at different levels to address this recommendation, including mass information activities with refugees on their rights and obligations. The Department of International Protection is developing a protection management strategy to be implemented at all UNHCR offices worldwide. The Office of the Inspector General is formulating a global complaints procedure, in consultation with the Office of Internal Oversight Services, which is part of an overall redefinition of its investigation strategy and capacity. Any such complaints procedure must be well developed and able to deal professionally and rapidly with all incoming complaints.

* Recommendation numbers in parentheses which appear in this section refer to internal codes used by the Office of Internal Oversight Services.

Recommendation 5

The Nairobi Branch Office Security should conduct unannounced, random spot checks of refugee interviews at the Branch Office and at the camps to ensure that UNHCR and/or partner non-governmental organization staff members are not abusing or circumventing the refugee processing system, nor extorting monies from the refugees (Rec. No. IV00/279/05).

UNHCR considers the use of random spot checks crucial for maintaining the integrity of the process, but this is not something that should be handled by the security section alone. UNHCR supports a two-pronged approach to this issue, targeting the abuse of the procedures, as regards information given during the interviews, as well as extortion of money and possibly other services prior to or as a means of gaining access to the procedures. In addition, random security checks by the Field Security Assessment staff of the Nairobi Branch Office to determine whether access to the procedure is being denied and/or whether criminal activity is taking place will be put in place.

Recommendation 6

The UNHCR Inspector General should establish a procedure for speedy referral to the Office of Internal Oversight Services of information obtained via the external reporting process relating to UNHCR staff wrongdoing (Rec. No. IV00/279/06).

The Office of the Inspector General is in close consultation with the Office of Internal Oversight Services on developing both the relationship between the two investigation functions and the development of the UNHCR investigation strategy and framework.

Recommendation 7

UNHCR should make every effort to employ interpreters who have some type of legal resident or settled refugee status in Kenya, or if a refugee is used, it should be a person who has been granted resettlement to a third country and is awaiting travel. However, if UNHCR is forced to continue to use refugees to translate, based on a lack of adequate foreign language personnel the Office of Internal Oversight Services should conduct spot checks of interpreters. The spot checks would consist of recording select conversations and interviews to ensure that the translations are accurate (Rec. No. IV00/279/07).

UNHCR agrees generally with the first part of this recommendation. However, it believes that the checks proposed in the second half of the recommendation are a UNHCR management function. This would not preclude requesting the assistance of resettlement countries or the Office of Internal Oversight Services in specific instances.

Recommendation 8

An Administrative consultant versed in file record management and ethical-legal issues be retained to review the file and documentary system at the UNHCR Branch Office to oversee the implementation of a system governed by policy and directives that is compatible with both a paper and electronic file retention system (Rec. No. IV00/279/08).

Agree. The plan of action for the Nairobi Office seeks to address this issue. It is noted that the recommendation calls for policy directives to guide the installation of this system. UNHCR feels that such policy guidelines should also address issues such as which staff members are allowed access to refugee files, as well as, inter alia, the recently issued UNHCR policy guidelines on confidentiality of Information Centre information.

Recommendation 9

UNHCR, with the assistance of its partner non-governmental organizations, should develop and utilize a registration system. Any person requesting a refugee mandate from the United Nations, whether at a refugee camp or a branch office, should have their finger or thumbprint, a digital photograph and a brief synopsis of their respective credible fear claims entered into the database. It is imperative that once a claim is entered into a system the information contained therein be locked from future change or manipulation. Every subsequent contact between a refugee and the United Nations and/or its non-governmental organization partners should be prefaced by a check to ensure that the refugee presenting himself or herself to the officer is the same person who made the original claim.

Furthermore, it is imperative that the information be shared with resettlement countries, which can verify the identity of the refugee at the respective port of entry, prior to that refugee effecting entry (Rec. No. IV00/279/09).

UNHCR agrees on the concerns which this recommendation addresses. UNHCR has been working for some time on uniform registration systems in UNHCR. As part of the comprehensive reform plan for the Kenya Branch Office, UNHCR would focus on standardizing procedures that are subject to internal control checks, and make sure there is training and a system of checks on these procedures.

Recommendation 10

Improvements should be made to the current UNHCR refugee mandate letters and other refugee paperwork that is susceptible to duplication and forgery. For example, the current mandate letter has no security features and is a simple pasted photograph on normal paper with a wet seal (Rec. No. IV00/279/10).

Agree. Implementation of this recommendation is being looked into by the Department of International Protection and the Supplies and the Transport Section of UNHCR. In addition, the UNHCR Branch Office in Kenya is working with the Kenyan authorities on a comprehensive review of mandate letters.

Recommendation 11

UNHCR should utilize a dry seal that is controlled and/or contains a number or initials, which indicate the granting/issuing officer. Furthermore, the mandate letter itself should be a secure numbered document with security features such as digitized photographs and wet seals. This would minimize the likelihood of photo substitutions, etc. (Rec. No. IV00/279/11).

UNHCR agrees.

Recommendation 12

UNHCR should examine other locations where there are the same indicators, that is, large refugee populations, few opportunities for repatriation or resettlement, poorly rated or insubstantial management, for similar evidence of criminal enterprises (Rec. No. IV00/279/12).

Agree. This is being undertaken. In addition, UNHCR is looking into ways to ensure that staff are provided with fraud awareness training and that risk/vulnerability assessments become a routine function within the organization.

(*Signed*) Dileep **Nair**
Under-Secretary-General for
Internal Oversight Services